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## The Uniform Consumer Credit Code

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## THE UNIFORM CONSUMER CREDIT CODE

JOHN T. COPENHAVER, JR.\*

### I. INTRODUCTION

The Uniform Consumer Credit Code is the product of some four years of effort on the part of the National Conference of Commissioners on Uniform State Laws. It is the design of this article to review the purpose and the provisions of the Code generally and to consider the effect its adoption would have on existing law and practices in West Virginia.

The final draft of the Code<sup>1</sup> was adopted at the 1968 annual meeting of the Commissioners and has since been approved by the American Bar Association. Although the final draft is subject to style changes that will conform the Code to the requirements and regulations of the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act,<sup>2</sup> it is anticipated that all such changes will be of a relatively minor nature.<sup>3</sup> On the other hand, whether the Code will meet a sufficient measure of resistance in the various state legislatures so as to bring about changes

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<sup>1</sup> UNIFORM CONSUMER CREDIT CODE (Final Draft) hereinafter cited as UCCC. All references and citations are to the final draft as adopted by the National Conference of Commissioners on Uniform State Laws on July 30, 1968, as revised in November, 1968.

<sup>2</sup> Act of May 29, 1968, Pub. L. No. 90-321, § 1 *et seq.*, — Stat. —. The Consumer Credit Protection Act embraces the Truth in Lending Act dealing with disclosure, advertising and rescission by the debtor of certain transactions creating a lien on his residence. It also limits wage garnishment and provides criminal penalties with respect to extortionate credit transactions.

<sup>3</sup> Such changes may not seem quite so minor to those sellers and lenders who find unduly burdensome the cost and inefficiency of compliance with certain of the disclosure requirements of proposed Regulation Z of the Federal Reserve Board (12 C.F.R. § 226) under the Federal Consumer Credit Protection Act. Presumably, reasonable adjustments will be made to allow for special problems without weakening the disclosure principle. Finalization of the Code and the regulation of the Federal Reserve Board is expected in January, 1969.

of a more substantial kind, as was the case in the early years of the Uniform Commercial Code, remains to be seen.<sup>4</sup>

The Code would replace existing general and special interest rate statutes and retail installment sales acts with a single legislative enactment. A general rate ceiling of 18 percent per year would apply, with higher rates permissible for the smaller transactions ranging as high as \$6,000.<sup>5</sup> These higher rates on both sales and loans would run to 36 percent per year on the first \$300, 21 percent per year on the next \$700, and 15 percent per year on the excess over \$1,000; however, sales under revolving charge accounts would be limited to 2 percent per month on the first \$500 and 1-1/2 percent per month on the excess over \$500.

The Code ceilings are premised on the theory that rate maximums must be high enough to permit the flow of goods and money on credit to the broadest feasible segment of consumers and yet with some limits imposed in order to protect the necessitous or unsophisticated consumer who is in no position to bargain with the seller or the lender. Even so, the seemingly generous rates authorized under the Code are not entirely out of line with the maximum yields now permitted to certain classes of creditors in West Virginia, as is later noted in some detail.

Having established liberal rate ceilings, the Code provides the climate for the settling of actual rates at levels lower than the ceilings by encouraging competition both through free entry into the lending arena and through disclosure of the true annual rate of the credit service charge on sales and the loan finance charge on loans. Disclosure, of course, is required under the Federal Consumer Credit Protection Act, effective July 1, 1969. However, the federal act provides that the Federal Reserve Board may exempt any class of credit transactions which it finds to be subject under state law to requirements substantially similar to those imposed under the federal act and for which there is adequate provision for enforcement. The provisions of the Code are designed to meet this standard. Through disclosure, it is to be hoped that the consuming public will in time become aware of the significance of rate charges to the end that shopping for the best credit terms will tend to become as common as shopping for the most favorable commodity price. At the same time, competition is to be fostered under the Code through the process of free

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<sup>4</sup> Denonn, *The Uniform Consumer Credit Code Bombshell*, 22 PERSONAL FINANCE L.Q. REP. 125 (1968).

<sup>5</sup> See note 38, *infra*.

lender entry into the loan field, thereby doing away with the segmented and rigidly structured system into which the general and special interest rate statutes now cast the various types of lenders. As a result, the banks will be enabled by adequate rates to enter the small loan field, the small loan companies will be given access to the entire loan field, and the sales finance companies and even the sellers themselves will be permitted to go beyond the financing of sales of automobiles and other goods by making consumer cash loans.

Although free entry is basic to the Code concept, it can be anticipated that opposition to this key provision will come from certain lenders who are now favored with special legislation under which they enjoy a degree of monopoly to charge at high rate levels. For example, under existing law<sup>6</sup> a small loan company cannot operate under the Small Loans Act until it has first obtained a license from the banking commissioner. In determining whether a license will be granted, the banking commissioner applies the convenience and advantage test under which he sifts all the circumstances of the proposed operation, its location, the needs of the community and the effect on other financial institutions in the area.<sup>7</sup> The Code discards this test. Instead, anyone desiring to enter the lending field may make loans carrying rates up to 18 percent per year without a license. Those wishing to make supervised loans (carrying rates over 18 percent) must apply for a license<sup>8</sup> from the Administrator, a position which would likely be filled by the banking commissioner.<sup>9</sup> Licenses will be easy to obtain under the character and fitness standard adopted by the Code. Under this test, the Administrator need only find that the financial responsibility, character and fitness of the applicant, its members or officers, are such as to warrant the belief that the business will be operated honestly and fairly.<sup>10</sup> But all licensees will be subject to close supervision.<sup>11</sup> Supervised financial organizations, such as banks and industrial loan companies, will not need a license inasmuch as they will continue to be supervised<sup>12</sup> by the same state or national official or agency to whose supervision the organization is already subject.<sup>13</sup> All others, whether making supervised loans or not, will be subject to investigatory powers exercised by the Administrator.<sup>14</sup>

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<sup>6</sup> W. VA. CODE ch. 47, art. 7A, § 1 (Michie 1966).

<sup>7</sup> *Id.* § 4.

<sup>8</sup> UCCC § 3.503.

<sup>9</sup> UCCC § 6.103.

<sup>10</sup> UCCC § 3.503 (2).

<sup>11</sup> UCCC §§ 3.505, 3.506.

<sup>12</sup> UCCC § 3.502.

<sup>13</sup> UCCC §§ 3.506, 6.105.

<sup>14</sup> UCCC §§ 3.506, 6.106.

The Code also contains a number of provisions designed to protect the consumer from practices regarded as either inherently abusive or as having formed the basis for substantial abuse in the past. It curtails certain collection remedies deemed unduly harsh and it limits a number of other creditor practices which have led to immoderation and overreaching. Concomitantly, the Code grants the debtor a three-day right to rescind certain transactions which create a lien on his home or which he has made with door-to-door salesmen. It also confers upon him the right to recover excessive charges and, in certain instances, penalties for violations of the Code. In addition to private enforcement by the debtor, the Code endows the Administrator with rather broad authority to conduct investigations, issue cease and desist orders and bring court actions to enforce such of his orders as have become final. He may also seek injunctive relief and recover on behalf of debtors or classes of debtors.<sup>15</sup>

## II. USURY AND REALITY

Although the principle of free competition without price control has been the hallmark of our economy with respect to the sale of goods and services,<sup>16</sup> statutes have long served to control the price of money in the consumer field. The history of usury statutes is a story frequently related in connection with the Code.<sup>17</sup> In biblical and medieval times, interest in any amount was a violation of religious law. In this country usury statutes generally served until this century to fix the maximum interest rate for the loan of money at or near 6 percent per year simple interest. However, in response to the social and economic necessity of establishing realistic rates in order to permit and encourage the extension of credit and the loan of money to the consumer, the general usury statutes of the states have been riddled with both legislative and judicial exceptions sanctioning increased rates for transactions falling in virtually every category. Nevertheless, the 6 percent myth continues today,<sup>18</sup> largely for the reason that so many of the special statutes are couched in terms of 6 percent, whereas the method under which the 6 percent calculation can

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<sup>15</sup> For an excellent article on the Code, see Jordan and Warren, *The Uniform Consumer Credit Code*, 68 COLUM. L. REV. 387 (1968).

<sup>16</sup> Exceptions include price control in times of emergency and charges made by utility monopolies.

<sup>17</sup> Benfield, *Money, Mortgages, and Migraine—The Usury Headache*, 19 CASE W. RES. L. REV. 819 (1968).

<sup>18</sup> Felsenfeld, *Consumer Interest Rates: A Public Learning Process*, 23 BUS. LAW. 931 (1968); Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 445 (1968).

be made is often such as to furnish yields up to several times the stated rate.

Because the seller frequently found that he could not, without loss, sell his goods on time at a 6 percent rate, the first major exception came by judicial fiat in the form of the time-price doctrine.<sup>19</sup> Under this doctrine, it was held that the usury statute was limited to the loan of money, thereby freeing the seller to make his sale on any terms he chose. The time-price principle effectively removed consumer credit sales from the inhibition of the general usury statutes and cleared the way prior to the turn of the twentieth century for the beginning of a consumer credit economy. With the proliferation of corresponding legislative exceptions in the lending field, relief from the stifling effect of a 6 percent rate inadequate to attract legitimate capital to meet the needs of the consumer has largely been realized.<sup>20</sup>

The Uniform Small Loan Act, developed by the Russell Sage Foundation in 1916 after thorough study of the small loan business, constituted one of the early exceptions in the lending field. Originally establishing rates as high as 42 percent on loans up to \$300, the Small Loan Acts served to attract investment funds into a high risk consumer area where loan sharks had long flourished by extracting exorbitant charges from the necessitous and the ignorant. At about the same time came the Morris Plan banks and industrial loan companies which, in effect, were authorized to loan at a 6 percent rate, calculated on and discounted from the original principal balance for the whole term of the loan without regard to the fact that the loan was repayable in equal monthly installments. The 6 percent discount rate under the Morris Plan served to produce true annual interest ranging from nearly 12 percent on a one year loan to 15 percent on a five year loan. Subsequently, similar installment loan exceptions were extended to commercial banks. Credit unions have likewise been authorized high level rates, varying from 1 percent to 1-1/2 percent per month for a true annual interest rate of 12 percent to 18 percent. Numerous other exceptions have been granted to other lending institutions in the various states. In effect, these exceptions simply constitute recognition of the hard fact that loan money is not available and will not be made available unless the investor

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<sup>19</sup> *Hogg v. Ruffner*, 66 U. S. (1 Black) 115 (1861); *Reger v. O'Neal*, 33 Va. 159, 10 S.E. 375 (1889).

<sup>20</sup> *Johnson, Regulation of Finance Charges on Consumer Instalment Credit*, 66 MICH. L. REV. 81 (1967); Benfield, *Money, Mortgages, and Migraine—The Usury Headache*, 19 CASE W. RES. L. REV. 819 (1968).

is adequately compensated for the use of his money and reimbursed for the substantial costs which he incurs in procuring, making, setting up and collecting his loans, together with an adequate reserve to meet bad debt losses.<sup>21</sup>

Most consumer indebtedness, though not always classified as such, falls in the category of residence real estate mortgage debt.<sup>22</sup> The interest rate on home mortgages is controlled not by the usury statute but by the realities of the marketplace.<sup>23</sup> A substantial measure of the first mortgage loan business in West Virginia was subject to a 6 percent rate until increased to 8 percent by the legislature in September 1968.<sup>24</sup> For many years prior to the increase, first mortgage money was loaned at rates below the 6 percent level by virtue of the prevailing conditions of the money market. As the market rate rose to 6 percent and then beyond, investors subject to the 6 percent limitation simply withdrew their funds from West Virginia until the legislature acted to revise upward the lawful rate. These same competitive forces, not the rate statutes, likewise govern the return realized in the financing of the sale of new automobiles and, to a substantial degree, other consumer goods.<sup>25</sup>

A somewhat different set of circumstances influences the rate at which money is lent by the small loan companies and industrial loan companies. Here, the borrowers fall in a high risk class, the security is seldom adequate and the rates are generally geared to the maximum interest allowed by law. By employing maximum rates, those engaged in lending at this economic level serve a broader seg-

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<sup>21</sup> Benfield, *Money, Mortgages, and Migraine—The Usury Headache*, 19 CASE W. RES. L. REV. 819 (1968).

<sup>22</sup> As of December 31, 1967, consumer indebtedness in the United States was composed of the following:

Residence Mortgage Debt	
(1 to 4 family dwellings) .....	229.0 Billion
Consumer Installment Debt	
Automobile paper .....	31.2
Other consumer goods paper .....	21.3
Repair and modernization paper .....	3.7
Personal loans .....	21.7 77.9 Billion
Consumer Non-Installment Debt .....	21.3 Billion
	328.2 Billion

FINANCE FACTS 1968 YEARBOOK, 37, 42 (1968).

<sup>23</sup> Benfield, *Money, Mortgages, and Migraine—The Usury Headache*, 19 CASE W. RES. L. REV. 819, 858 (1968).

<sup>24</sup> W. VA. CODE ch. 47, art. 6, § 5 (Michie 1966), as amended, W. Va. Legislature, 1968 Extraordinary Session (Sept. 14, 1968).

<sup>25</sup> Johnson, *Regulation of Finance Charges on Consumer Instalment Credit*, 66 MICH. L. REV. 81, 91-92 (1967).

ment of consumers than would be possible if they were to classify their debtors by degree of risk and allot rates accordingly. In essence, their better accounts are helping to pay the way for marginal debtors for whom credit would not otherwise be available. It is to be hoped that the competitive forces set free under the Code would bring about more discrimination in the rates charged to such debtors so as to scale them more nearly in accordance with the degree of risk involved. The extent to which this will occur is problematical indeed. In any case, as is developed below, the maximum rates under the Code are, in many respects, no greater than those which lenders serving high risk clientele are already authorized to charge under West Virginia law.

Existing rates, like the Code rates, take into account the various factors which necessitate adoption of high rate levels. For example, investment funds obtained by small loan companies and industrial loan companies are generally borrowed from banks at the prime rate, currently running in the range of 6 percent. Additionally, the smaller companies must pay a further premium in the form either of a direct charge or a requirement that the borrowing company not draw upon a so-called compensating balance. Thus, the cost of such borrowed money may run well in excess of the prime rate, dependent upon the interplay of all those factors which determine in a given instance the rate at which funds will be lent.

In addition to the cost of his money, the small loan or industrial loan operator must also recoup the general expense of his business operation, including the cost of making a given loan, setting it up on his books and collecting the account. These fixed costs per loan are frequently as great for a \$500 loan as for a \$5,000 loan, thereby necessitating a higher rate of return on the smaller loans. In this connection, a recent study of major national consumer finance companies discloses their average annual operating expenses, excluding cost of money and bad debt reserve, to be \$10.47 per \$100 of average loan balance.<sup>26</sup> Moreover, bad debt losses on small loans and industrial loans are substantially greater than those incurred on the lower risk, better-secured loans handled by the banks. Only after all of these fixed costs have been absorbed does the return to the lender commence to produce a profit. Unless the authorized rates

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<sup>26</sup> J. CHAPMAN & R. SHAY, *THE CONSUMER FINANCE INDUSTRY* 38 (1967). See also Johnson, *Regulation of Finance Charges on Consumer Instalment Credit*, 66 MICH. L. REV. 81, 110-11 (1967); Felsenfeld, *Consumer Interest Rates: A Public Learning Process*, 23 BUS. LAW. 931, 934-38 (1968).



are great enough to justify investors to enter the higher risk field, legitimate capital is simply not available. Instead, loan sharks will inevitably rush into the vacuum at rates far in excess of those at which the small loan and industrial loan companies now operate.

### III. RATE CEILINGS

In the place of "interest," the Code substitutes the terms "credit service charge"<sup>27</sup> with respect to sales and "loan finance charge"<sup>28</sup> with respect to loans. They constitute the charges which are subject to rate ceilings and which must be disclosed to the debtor in the form of the true annual rate. The credit service and loan finance charges are given essentially the same meaning. Both embrace not only time-price differential, service charges, carrying charges, interest, points, discount and similar charges, but also credit investigation charges, broker fees and all other charges imposed as an incident to the extension of credit. This means that premiums for credit life insurance and credit accident and health insurance must be treated as part of the credit service or loan finance charge where the seller or lender requires the debtor to furnish such insurance as a condition of making the credit sale or loan; but if the debtor, after being notified in writing that he need not purchase such insurance, elects nevertheless to do so, the premium may be treated as an "additional charge"<sup>29</sup> permitted over and above and excluded from the credit service or loan finance charge. On the other hand, the debtor can be required to furnish property casualty insurance and the premium for this will be treated as an additional charge if written notice is given to the debtor that he may purchase such insurance elsewhere.<sup>30</sup> Other additional charges unaffected by the rate limits of the Code include official fees and taxes, annual charges for certain lender credit cards and reasonable closing costs in connection with real estate transactions where the credit service or loan finance charge does not otherwise exceed 10 percent per year.<sup>31</sup>

#### A. Consumer Credit Sales

Although consumer credit sales have not been subjected to rate limitations in West Virginia,<sup>32</sup> the Code would impose rate ceilings on

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<sup>27</sup> UCCC § 2.109.

<sup>28</sup> UCCC § 3.109.

<sup>29</sup> UCCC §§ 2.202, 3.202.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Reger v. O'Neal*, 33 W. Va. 159 10 S.E. 375 (1889).

nearly all such sales. A consumer credit sale<sup>33</sup> is defined as the sale of goods or services where the amount financed does not exceed \$25,000 and the sale of an interest in land regardless of amount, whereunder a professional creditor sells to an individual (as distinguished from a partnership or corporation) for a personal, family, household or agricultural purpose, provided that the debt is either payable in four or more installments or a credit service charge is made.<sup>34</sup>

The credit service charge is established at a general maximum rate of 18 percent per year,<sup>35</sup> with two exceptions. Revolving charge accounts may carry a rate of 2 percent per month on the first \$500 and 1-1/2 percent per month on the excess over \$500, with a minimum charge of \$.50 per month.<sup>36</sup> All other consumer credit sales may take place under rate ceilings as follows: 36 percent per year on the first \$300, 21 percent per year on the next \$700, and 15 percent per year on all sums in excess of \$1,000, with a minimum charge of \$5 on sales up to \$75 and a minimum charge of \$7.50 on sales over \$75.<sup>37</sup> It is noted that the charge under the latter formula subsides near to an overall rate of 18 percent per year when the balance is in the range of \$3,500 to \$6,000.<sup>38</sup> Accordingly, on credit transac-

<sup>33</sup> All such consumer credit sales are subject not only to the rate limits imposed by the Code but also to the provisions on disclosure, debtor remedies, limitation of creditor rights and administrative enforcement. However, real estate transactions at rates not exceeding 10% per year are subject only to disclosure and debtor remedies. UCCC § 2.104 (2) (b).

<sup>34</sup> If the debt is payable in four or more installments, credit jewelers and credit clothing merchants who do not separately state a credit service charge are nevertheless covered by other disclosure requirements as well as provisions of the Code relating to debtor remedies, limitation of creditor rights and administrative enforcement. But where no credit service charge is made and the debt is payable in less than four installments, the transaction is not covered by any of the Code's provisions; thus, excluded from the Code is the typical 30-day retail charge account as well as the usual single-payment arrangement generally contemplated for satisfaction of fees of professional men and many others who render services to the consumer.

<sup>35</sup> UCCC § 2.201 (2) (b).

<sup>36</sup> UCCC § 2.207 (3).

<sup>37</sup> UCCC § 2.201 (2), (6).

<sup>38</sup> However, the composite rate on a \$3,500 transaction repayable in equal monthly installments would be substantially greater than 18% because the rate increases as the reducing balance moves into the higher rate levels which prevail on the lower balances. For example, a one-year installment sale or loan of \$3,500 principal, with interest calculated at the Code's graduated rates, would be repayable in 12 equal monthly installments of \$324.21 each, resulting in a true annual rate of 20%. Correspondingly, a \$6,000 debt, repayable at the Code's graduated rates in 12 equal monthly installments of \$550.12 each, results in a true annual composite rate of 18%. Actually, consumer loans of this size would more likely be repayable over a longer period of three years in smaller installments, in which case the true annual rates would be slightly less.

tions in excess of \$6,000, a creditor seeking the highest permissible rate would utilize the flat 18 percent charge.

### B. Consumer Loans

In place of the various interest rate maximums now established under many different West Virginia statutes for various types of lenders, the Code would provide a general 18 percent rate ceiling for consumer loans,<sup>39</sup> with supervised loans carrying the same 36 percent — 21 percent — 15 percent ratios just noted in connection with consumer credit sales.<sup>40</sup> Like the consumer credit sale, a consumer loan is defined as a loan of money where either the principal does not exceed \$25,000 or the debt is secured by an interest in land regardless of amount, made by a professional lender to an individual (as distinguished from a partnership or corporation) for a personal, family, household or agricultural purpose, provided that the debt is either payable in two or more installments or a loan finance charge is made.<sup>41</sup>

Effective September 14, 1968, the current general simple interest rate maximum in West Virginia was increased from 6 percent to 8 percent per year.<sup>42</sup> The 8 percent simple interest rate, like the 6 percent rate before it, governs loans made by individuals and loans made by firms not accorded higher rates under the various special statutes.<sup>43</sup> However, the bulk of consumer lending in West Vir-

<sup>39</sup> UCCC § 3.201 (1). The 18% limit is applicable to non-regulated loans (carrying rates up to 10% per year) and regulated loans (carrying rates over 10%). A \$.50 minimum monthly charge is permitted on revolving loan accounts bearing not more than the 18% rate, UCCC § 3.201 (4) (c). Otherwise, no minimum charge is permitted on loans of any kind except on prepayment, refinancing or consolidation, in which case the minimum is \$5 on a principal loan of \$75 and \$7.50 on a principal loan in excess of \$75 but in no event more than the total finance charge originally agreed upon.

<sup>40</sup> UCCC § 3.508. Supervised loans would cover loans of principal up to \$3,500 and somewhat beyond, as observed at note 38, *supra*.

<sup>41</sup> UCCC § 3.104.

<sup>42</sup> W. VA. CODE ch. 47, art. 6, § 5 (Michie 1966), *as amended*, W. Va. Legislature, 1968 Extraordinary Session (Sept. 14, 1968).

<sup>43</sup> The interest rate remains at 6% for lenders licensed under the secondary mortgage statute relating to residence real estate, with all additional charges for title fees, credit investigation fees, brokerage, discount and the like limited to 10% of the principal sum loaned. W. VA. CODE ch. 31, art. 17, § 8 (Michie Supp. 1968). Banks, industrial loan companies, credit unions and other lenders duly licensed or chartered under other statutory provisions are expressly exempt from the limitations imposed by the secondary mortgage statute, W. VA. CODE ch. 31, art. 17, § 2 (Michie Supp. 1968).

ginia is controlled by special interest rate statutes permitting yields well in excess of the general 8 percent maximum.

Lenders now favored in West Virginia with high rate ceilings include West Virginia chartered credit unions at 1-1/2 percent per month, being 18 percent per year simple interest.<sup>44</sup> Building and loan associations may charge such premium in excess of the general 8 percent rate as may be fixed by their by-laws<sup>45</sup> and approved by the banking commissioner.<sup>46</sup> Small loan companies are governed by rates comparable to those sanctioned by the Code up to \$800, calculated as follows: 36 percent on the first \$200, 24 percent on the next \$400, and 18 percent on the next \$200, with all over \$800 being set at 6 percent per year simple interest.<sup>47</sup> Like the general interest ceiling of 8 percent per year, each of the foregoing is based on simple annual interest calculated according to the actuarial method.<sup>48</sup> So, too, are the rate maximums authorized under the Code.<sup>49</sup> By simple interest is meant true annual interest. It is the rate which one ordinarily has in mind when speaking of interest.

Higher rates are also available for installment loans by commercial banks<sup>50</sup> and industrial savings and loan companies.<sup>51</sup> Inasmuch as consumer loans of all types are generally repayable on an installment basis, the higher rates govern. These rates are expressed in terms equivalent to 6 percent discount for banks and 8 percent discount for industrial loan companies.<sup>52</sup> Rates expressed as a percentage discount in fact carry a true annual rate much greater than the stated

<sup>44</sup> W. VA. CODE ch. 31, art. 10, § 16 (Michie 1966). Federal credit unions may loan at 1% per month, being 12% per year simple interest, 12 U.S.C. § 1757(5) (1967).

<sup>45</sup> W. VA. CODE ch. 31, art. 6 § 17 (Michie 1966).

<sup>46</sup> W. VA. CODE ch. 31, art. 6, § 7 (Michie 1966). *See also* W. VA. CODE ch. 31, art. 6, § 41 and ch. 31, art. 8, § 20(c) (Michie 1966).

<sup>47</sup> W. VA. CODE ch. 47, art. 7A, § 13 (Michie 1966).

<sup>48</sup> UCCC § 1.301 (1). The actuarial method is the process of allocating payments made on a debt between principal and the credit charge, pursuant to which a payment is applied first to the accumulated credit charge and the balance is applied to the unpaid principal.

<sup>49</sup> *Id.*

<sup>50</sup> W. VA. CODE ch. 31, art. 4, § 20. *See also* W. VA. CODE ch. 31, art. 8, § 20(c) (Michie 1966).

<sup>51</sup> W. VA. CODE ch. 31, art. 7, § 6(e). *See also* W. VA. CODE ch. 31, art. 8, § 20(c) (Michie 1966).

<sup>52</sup> The 1968 amendment to W. VA. CODE ch. 47, art. 6, § 5 (Michie Supp. 1968), raising the general interest rate from 6% to 8%, specifies that a "banking institution" entitled to 6% discount on installment loans under W. VA. CODE ch. 31, art. 4, § 20 (Michie 1966), remains limited to the 6% discount rate on such loans. However, an industrial loan company is not a banking institution, *Community Savings & Loan Co. v. James*, 121 W. Va. 5, 1 S.E.2d 617 (1939); nor is it governed by W. VA. CODE ch. 31, art. 4, § 20 (Michie 1966).

figure. This is due to two factors. First, the amount of the interest is calculated as though the original loan were outstanding for the entire term of the loan, whereas the loan is ordinarily repayable in equal monthly installments that serve to decrease the unpaid balance each month. This feature nearly doubles the effective rate of interest.<sup>53</sup> Secondly, the interest so calculated is deducted from the face amount of the loan so that the borrower does not actually receive the full sum on which the interest calculation was made. This, too, serves to increase the effective rate of interest. Moreover, as the term of the loan lengthens, the amount of interest deducted from the face of the loan increases while the sum actually placed in the hands of the borrower subsides accordingly. This further augments the rate of return, as the accompanying chart indicates.<sup>54</sup> Thus, the effective annual simple interest rate for banks on installment loans at 6 percent discount is 11.58 percent for a one year loan, rising to 13.4 percent for a three year loan and 15 percent for a five year loan.<sup>55</sup>

The installment loan rate of 8 percent discount permitted to industrial loan companies runs considerably higher, as the chart indicates.<sup>56</sup> Also, the industrial loan companies are authorized to make a flat charge of 2 percent of the face amount of each loan for expenses incurred in making the loan, such as investigation of the character and circumstances of the debtor and the preparation of loan papers and the like.<sup>57</sup> In essence, this charge constitutes additional interest and, under the Code, would be treated as a part of the loan finance

<sup>53</sup> This refers to discount rates ranging from 6% to 10% on loans repayable in equal monthly installments over a one year period. Rates on such loans in excess of 10% discount are more than double the stated rate. See the chart at note 54, *infra*.

<sup>54</sup> CONVERSION TO TRUE ANNUAL INTEREST OF RATES  
STATED AS PERCENTAGE DISCOUNT ON LOANS REPAYABLE  
IN EQUAL MONTHLY INSTALLMENTS OVER 1, 2, and 3 YEAR TERMS

Percentage Discount Rate	TRUE ANNUAL INTEREST RATE		
	1 yr. term	2 yr. term	3 yr. term
6%	11.6%	12.6%	13.4%
7	13.6	14.9	16.0
8	15.7	17.3	18.8
9	17.8	19.8	21.8
10	19.9	22.4	24.8
11	22.1	25.1	28.2
12	24.3	27.9	31.8

<sup>55</sup> By way of contrast, where the interest is added instead of discounted, the yield on loans of one year or longer remains virtually constant despite increased length of maturity. For an installment loan carrying a 6% add-on rate, the true annual interest will remain at about 10.9% regardless of the number of years over which such a loan may extend. Of course, under the actuarial method, the charge is neither added nor deducted—and the rate remains exactly as stated.

<sup>56</sup> *Supra* note 54.

<sup>57</sup> W. VA. CODE ch. 31, art. 7, § 6(f) (Michie 1966).

charge.<sup>58</sup> By allocating the 2 percent charge over the number of years of the loan and adding it to the 8 percent discount rate, the actual discount rate becomes 10 percent for a one year loan, 9 percent for a two year loan, 8.67 percent for a three year loan and so on. This, in turn, produces true annual interest, as indicated by the chart, of 19.9 percent for a one year loan, 19.8 percent for a two year loan and 20.8 for a three year loan.<sup>59</sup> In addition, the true yield goes substantially higher through tie-in sales of insurance. As will be later developed, the insurance factor can readily raise the true annual yield for industrial loan companies to 21.6 percent for a one year loan, 21.8 percent for a two year loan and 23.1 percent for a three year loan.<sup>60</sup>

So, it is seen, once the mystique is removed, that the rates proposed under the Code are, in many instances, no greater than those now authorized in West Virginia.

### C. Consumer Related Sales and Loans

The terms "consumer related sale"<sup>61</sup> and "consumer related loan"<sup>62</sup> cover a substantial number of transactions which do not fall within the definition of a consumer credit sale or loan. This coverage establishes an 18 percent per year ceiling on the credit service or loan finance charge for all such consumer related sales or loans,<sup>63</sup> except that sales under revolving charge accounts are governed by a 2 percent per month rate on the first \$500 and 1-1/2 percent per month on the excess over \$500.<sup>64</sup>

Consumer related sales and loans are those involving a sale or loan of any kind where the amount financed or loaned does not exceed \$25,000, if the buyer is an individual or if the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person closely related to the debtor, such as a member of the family or an officer or controlling stockholder of a debtor corporation.<sup>65</sup> This means that the 18 percent rate applies generally to all such sales or loans by a seller or lender who is not otherwise covered because he does not regularly engage in similar credit transactions. It also

<sup>58</sup> UCCC § 3.109. See also UCCC § 2.109.

<sup>59</sup> *Supra* note 54.

<sup>60</sup> See text at notes 70 to 79, *infra*.

<sup>61</sup> UCCC § 2.602 (1).

<sup>62</sup> UCCC § 3.602 (1).

<sup>63</sup> UCCC §§ 2.602 (2), 3.602 (2).

<sup>64</sup> UCCC § 2.602 (3).

<sup>65</sup> UCCC §§ 2.602 (1), 3.602 (1).

applies to credit sales or loans to individuals for a business purpose, such as the sale of inventory or the loan of money to the self-employed grocer. It likewise covers the situation in which the controlling stockholder of a small corporation is required to use his home as security for a business loan. In essence, the parties protected are those who are apt to be as much in need of protection as any consumer. But if the amount financed or loaned exceeds \$25,000, they are presumed to be capable of fending for themselves.

On the other hand, sales or loans to a corporation, other than one involving a residence mortgage in the instance above noted, are not covered by interest rate or other Code limitations. Thus, the Code simply continues the existing statutory policy of exempting corporations from the defense of usury<sup>66</sup> and extends it to other business organizations as well. The theory, of course, is that such organizations are able to protect their own interests.

#### IV. INSURANCE

As already indicated, yields on loans may go substantially beyond usury limitations through tie-in sales of insurance. It is customary for industrial loan companies in West Virginia to require the borrower to incur a premium for credit life insurance that will pay off the unpaid balance in the event of the borrower's death. Many industrial loan companies also require the borrower to purchase a credit accident and health insurance policy that is designed to cover loan payments falling due during the period of the borrower's disability. These insurance premiums, to be sure, are not interest.

Nevertheless, the increased yield derived by the lender is here the equivalent of interest. The premiums charged for such insurance are generally far greater than would be required if the lender were interested in effecting a group plan with an insurance company affording protection at the lowest competitive cost. Instead, however, of seeking the lowest cost, the lender seeks out the highest cost insurance in order that he might obtain the excessive portion of the premium in the form of substantial sales commissions and rebates. Thus, the excess goes not to the insurer but to the lender. This practice is well known to the insurance industry as reverse competition.<sup>67</sup>

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<sup>66</sup> W. VA. CODE ch. 47, art. 6, § 10 (Michie 1966).

<sup>67</sup> For an excellent analysis of credit insurance practices, see *Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess., pt. 1 (1967), statement of James H. Hunt, Fellow, Society of Actuaries, Commissioner of Banking and Insurance, State of

For example, the credit life insurance premium which the debtor must pay in connection with industrial loans is now frequently set at \$1 per \$100 per year of decreasing term insurance; decreasing, that is, in accordance with the unpaid balance of the loan. In other words, the actual cost comes to \$20 per \$1,000 of outstanding insurance per year. This can be compared with an annual charge of approximately \$7 per \$1000 for which a mutual insurance company furnishes credit life to credit union borrowers throughout the United States and for which the credit unions make no separate charge to the debtor. In alternate terms, the \$1 per \$100 per year of decreasing term can be compared to the charge of \$.37-1/2 per \$100 per year which a life insurance company charges a large corporation for credit life coverage on its sales financing paper.<sup>68</sup> It can likewise be compared to the sum of \$.50 per \$100 which major banks in the Kana-wha Valley area charge to their debtors in those instances where a separate charge for credit life is made. Commissions and credits to lenders selling credit life insurance at the \$1 rate easily reach \$.50 or more for each \$100 of loan per year of decreasing term.<sup>69</sup>

As this is written, the state insurance commissioner has just promulgated a proposed regulation under which the prima facie maximum rate for credit life insurance would be fixed, beginning in 1969, at \$.75 per \$100 per year.<sup>70</sup> Under the \$.75 rate, the yield to the lender can be estimated at some \$.25 or more for each \$100 of loan per year.<sup>71</sup> This would furnish an effective yield of about 1/4 percent for each year of the loan, discounted in advance.

Vt., at 57-68; and statement of W. Harold Bittel, Fellow, Society of Actuaries, Chief Actuary, N. J. Department of Banking and Insurance, at 72-76. As noted in the statement of James H. Hunt at page 58, credit life insurance covers an estimated 85% of all consumer installment debt, excluding charge accounts, credit cards and residential mortgage debt; and credit health insurance, covering only about 10% of consumer installment debt, is rapidly growing in popularity with creditors.

<sup>68</sup> *Hearings Before the Sub. Comm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess., pt. 2, at 1239-41 (1967).

<sup>69</sup> Loss benefits payable on credit life insurance over the nation average about \$.30 per \$100 per year. See statement of W. Harold Bittel, *Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess., pt. 1, at 72, 74 (1967).

<sup>70</sup> W. Va. Administrative Regulations, Insurance Commissioner, Reg. 6-9, § 6.01, promulgated Sept. 27, 1968.

<sup>71</sup> Indicative of the gain realized by the lender at the \$.75 rate, are the prima facie maximum credit life rates established in Vermont at \$.44; District of Columbia at \$.49; Connecticut, Massachusetts and Nevada at \$.50; Michigan, Oregon, Pennsylvania and Washington at \$.60; and New York and New Jersey where the rate ranges from \$.44 to \$.64, dependent upon case size. *Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess., pt. 1, exhibit 4, table 3, at 14-15.



The same proposed regulation deals with credit accident and health insurance.<sup>72</sup> Although no *prima facie* maximum rate is set, the proposed regulation would require the filing with the insurance commissioner of the policy form and the premium rate to be charged, together with actuarial justification for such rate. Inasmuch as the insurance commissioner is empowered by statute to disapprove a policy where the benefits are unreasonable in relation to the premium charged,<sup>73</sup> it is to be hoped that some measure of rate control will be exercised. However, a former regulation of the state insurance commissioner, containing a similar requirement of filing and rate justification,<sup>74</sup> has not precluded industrial loan companies from charging the borrower with credit accident and health rates up to \$5 per \$100 of loan for a three year term.<sup>75</sup> Even in those states setting *prima facie* maximum credit accident and health rates and establishing specific dollar limits on the cost of such coverage, the rates are substantial, running generally in the range of \$2.20 for a one year term, \$3.00 for a two year term and \$3.80 for a three year term.<sup>76</sup> On the average, premiums at this level run about double the cost of credit life insurance and double, too, are the commissions to the lender, coming to an estimated average of about 1/2 percent per \$100 per year.

By combining the credit life 1/4 percent yield with the credit accident and health 1/2 percent yield, the lender would derive commissions and credits aggregating approximately 3/4 percent per \$100 per year, discounted in advance.<sup>77</sup> Thus, these additional yields from insurance sales commissions and credits would equal 3/4 percent for a one year loan, 1-1/2 percent for a two year loan, 2-1/4 percent for a three year loan and so on. Consequently, when the total yield to the industrial loan company is calculated by adding the authorized 8 percent annual rate, the allocable portion of the 2 percent service charge and the commissions and credits of 3/4 percent per year on

<sup>72</sup> W. Va. Administrative Regulations, Insurance Commissioner, Reg. 6-9, § 6.05, promulgated Sept. 27, 1968.

<sup>73</sup> W. VA. CODE ch. 33, art. 6, § 9(e) (Michie 1966).

<sup>74</sup> W. Va. Administrative Regulations, Insurance Commissioner, Reg. 59CLCA&S, § VII, promulgated July 15, 1959.

<sup>75</sup> A review of creditor claims filed by industrial loan companies in bankruptcy court cases in the Southern District of West Virginia indicates that the \$5 per \$100 rate is a popular one, although a number of such creditors handle lower cost policies.

<sup>76</sup> *Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess., pt. 1, exhibit 5, table 4, at 16-19.

<sup>77</sup> This, of course, is substantially less than the gain which many industrial loan companies are currently realizing in the absence of effective regulation.

credit life and credit accident and health insurance—all discounted in advance—the true annual rate comes to 21.6 percent for one year, 21.8 percent for two years, and 23.1 percent for three years.<sup>78</sup> Of course, as the term of the loan increases, the simple annual interest rate per year continues to rise at an accelerating rate, climbing here to 27.2 percent per year for a five year term. Moreover, absent adequate regulation and enforcement, the even higher yields that could be realized by industrial loan companies through tie-in sales of yet other forms of insurance would seem to be limited only by the imagination of the lender and, on occasion, the legal principle of unconscionability.<sup>79</sup>

The Code's Article on insurance<sup>80</sup> is somewhat more specific than existing West Virginia statutory law in granting regulatory authority to the Insurance Commissioner with respect to credit-connected insurance. Nevertheless, the Code itself will do little to curtail the hidden gains realized by sellers or lenders who choose to exploit the opportunities available to them through tie-in sales of insurance. Of course, the Code does compel one who requires his debtor to purchase credit life and accident and health insurance to include the entire cost as a part of his credit service or loan finance charge.<sup>81</sup> This means that both interest and insurance premium combined cannot exceed the rate ceiling. It likewise means that the seller or lender must disclose his rate accordingly. Yet, it is naive to suppose that the necessitous or unsophisticated borrower cannot easily be persuaded in the lender's office to purchase such insurance "voluntarily" as an "additional charge" despite its high cost and dubious worth to the debtor.<sup>82</sup>

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<sup>78</sup> See text at notes 50 to 60, *supra*, and chart at note 54, *supra*.

<sup>79</sup> See *In re Holley*, Debtor (Ref. S. D. W. Va. 1968) involving the claim of an industrial loan company on a 36-month installment note in the original face amount of \$3,420. From the loan proceeds, charges were deducted not only for credit life insurance at \$1 per \$100 per year on decreasing term (\$102.60) and for credit accident and health insurance at \$5 per \$100 for the three-year term (\$171.00), but also for a high cost fire, inland marine, extended coverage and theft policy, insuring the debtor's household goods for three years against such impending perils as shipwreck, train derailment and bridge collapse. Although the policy purported to cover actual cash value up to \$3,420, the household goods had an original cost of only \$1,100. Three-fourths of the \$153.90 premium for the household goods policy was ordered stricken from the claim.

<sup>80</sup> UCCC §§ 4.101-4.304.

<sup>81</sup> See text at notes 27 to 29, *supra*.

<sup>82</sup> Low cost credit life insurance which pays off the bank's balance on a new car purchase ordinarily leaves the debtor's estate with a valuable asset. But high cost credit life which pays off the industrial loan company's balance on a loan secured merely by used household goods ordinarily leaves the

It seems that the preferable answer to reverse competition lies in strict regulation designed to achieve rates at equitable levels that prohibit lender profiteering. The step now being taken by the State Insurance Commissioner to regulate this area is helpful, but it is only a beginning. The premium rates for credit insurance ought to be reduced to the point that commissions to the seller or lender are minimal, particularly in view of the generous rate ceilings under the Code. It can, indeed, be argued that merely obtaining the benefit of credit insurance protection ought to be commission enough to the creditor. In any case, whether the Code be adopted or not, it appears that it is time for the legislature to concern itself with the adverse effect on the borrower of reverse competition in the credit insurance field.

### V. DISCLOSURE

The central provision of Title 1 of the Federal Consumer Credit Protection Act, popularly known as the Truth in Lending Act, requires the creditor to state to the debtor the credit charge in terms of the true annual percentage rate.<sup>83</sup> Title 1, effective July 1, 1969, authorizes the Federal Reserve Board to exempt from federal disclosure requirements any class of transactions within any state if the Board determines that under the law of that state such transactions are subject to requirements substantially similar to those federally imposed, including the Board's regulations thereunder, and that there is adequate provision for enforcement.<sup>84</sup> In the main, the disclosure requirements of the Code are already well in line with the similar requirements under the federal act. At this writing, efforts are being made to reconcile the provisions of the Code and the preliminary regulations issued by the Federal Reserve Board.<sup>85</sup> This goal will doubtless be achieved.

#### A. *Disclosure in Sales and Loans*

Under the Code the required disclosure must be made clearly and conspicuously, in writing, with delivery of a copy to the debtor or, if

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debtor's estate with nothing but a motley assortment of furnishings having little value. Inasmuch as the lender in the latter situation would frequently have no financially responsible source from which to make the loan good, it is plain enough that the real worth of credit life in such cases is to the lender, not the debtor's "estate." Correspondingly, the value to the debtor in relation to the debtor in relation to the high premiums exacted for many accident and health policies which overprotect the debtor with unnecessarily extensive coverage is seldom apparent.

<sup>83</sup> Act of May 29, 1968, Pub. L. No. 90-321, § 1 *et seq.*,—Stat.—.

<sup>84</sup> *Id.* at § 123.

<sup>85</sup> Board of Governors of Federal Reserve System, Proposed Regulation Z, 12 C.F.R. § 226 (Oct. 16, 1968).

more than one, to at least one of the debtors.<sup>86</sup> The disclosure must be given before credit is extended, but this requirement is satisfied if disclosure is set forth conspicuously in the sale, lease or loan agreement itself.<sup>87</sup> An exception, however, for sales made by mail or telephone without personal solicitation permits disclosure to be made in the seller's catalog or other printed material distributed to the public, provided that before the first payment is due the seller furnishes the information otherwise required.<sup>88</sup> A similar exception applies to loans made by mail or telephone without personal solicitation.<sup>89</sup> Neither exception applies to sales or loans under revolving accounts.<sup>90</sup>

1. *Installment Sales and Loans Other Than Revolving Credit.*<sup>91</sup>—

Whereas the lender must give the borrower a statement of the amount paid to or for his account, the seller must give the buyer a statement containing (1) a description of the property sold, (2) the cash price of the property or services sold and (3) the down payment, including the net allowance for trade-in and a statement of the amount of any lien which the seller agrees to discharge. In addition, the statement of seller and lender alike must contain the following information: (a) amount and description of registration, title or license fees and official fees and taxes; (b) type and amount of insurance coverage and the amount of any separate charge therefor; (c) amount and description of other additional charges; (d) the principal or amount financed, being the net total of the foregoing; (e) the amount of the credit service or loan finance charge (but this need not be disclosed in the case of the sale of a dwelling or a loan secured by a first lien purchase money security interest on a dwelling, where such charge does not exceed 10 percent per year — as a result, the large sums of interest payable over the life of most first lien home mortgages need not be stated); (f) the amount of the unpaid balance, being the principal or amount financed plus the credit service or loan finance charge; (g) the true annual rate of the credit service or loan finance charge (but the rate need not be disclosed if the charge is \$5 or less

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<sup>86</sup> UCCC §§ 2.302, 3.302.

<sup>87</sup> *Id.* Written acknowledgement of receipt by the debtor to whom a statement is required to be given creates a presumption that it was so given.

<sup>88</sup> UCCC § 2.305. The buyer is given 15 days after receipt of the required information in which to prepay the account without incurring a credit service charge.

<sup>89</sup> UCCC § 3.305. *See also* §§ 3.306 (3), 3.310.

<sup>90</sup> UCCC §§ 2.305, 3.305.

<sup>91</sup> UCCC §§ 2.306, 3.306.

and the principal or amount financed does not exceed \$75 or if the charge is \$7.50 or less on amounts exceeding \$75); (h) a schedule of payments and late charges; and (i) description of any security interest held in respect to the extension of credit.

2. *Revolving Credit Sales and Loans.*<sup>92</sup>—Inasmuch as revolving credit arrangements contemplate a continuing fluctuation in the amount that will be outstanding from time to time, with the date of future purchases or loans thereunder being unknown at the outset, it is not feasible to apply the same rigid disclosure requirements governing a single sale or loan. Instead, the revolving charge account creditor is required to state the guidelines of their arrangement, by furnishing the buyer or borrower with the following information: (1) the conditions under which a credit service charge or loan finance charge may be made, including the time period for repayment without incurring such charge; (2) the method of determining the balance upon which the credit charge is to be computed; (3) the method of determining the amount of the credit service charge, including the monthly percentage (e.g., 1-1/2 percent) used to calculate the same; (4) the corresponding nominal annual percentage rate (e.g., 1-1/2 percent times 12; hence, 18 percent; (5) conditions under which additional charges for insurance and the like may be made; and (6) conditions under which the seller may hold a security interest in property securing the unpaid balance. In addition, the creditor is required to furnish the buyer or debtor with detailed information following the end of each billing cycle, setting forth a complete statement of the account at the beginning, during and end of each such period, together with a statement of the amount of the credit service or loan finance charge, the periodic percentage or percentages used to calculate the charge, the balance or balances on which such charge was so computed and the manner in which such balance was determined.

### B. *Disclosure in Other Situations*

1. *Consumer Leases.*<sup>93</sup>—The lessor must give to the lessee a statement containing a description of the goods, the amount paid or payable for official fees or taxes, the type and amount of insurance to be paid by the lessor, and a schedule of the date and amount of each periodic payment and the amount of any other charges, together with the total amount payable by the lessee. The lessor must also give to

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<sup>92</sup> UCCC §§ 2.310, 3.310.

<sup>93</sup> UCCC § 2.311.

the lessee a statement of the conditions under which the lessee may terminate the lease prior to the end of the term and the liabilities which the lease imposes upon the lessee at the end of the term. Of course, the disclosure requirements are satisfied by simply setting out the required information conspicuously in the lease, sale or loan agreement itself.<sup>94</sup>

2. *Advertising.*—In advertising the rate of a credit service or loan finance charge, the Code requires the advertising creditor to state the rate in terms of true annual percentage.<sup>95</sup> If the creditor states either the dollar amount of the charge or the dollar amount of the installment payments, he must also state the true annual rate of the charge and the number and amount of the installment payments. So, no longer will the seller be permitted merely to advertise that a given appliance “is yours for only \$18 per month.” He must also state how many \$18 installments are required and he must state the true annual percentage rate of the credit service charge.

## VI. LIMITATIONS ON CREDITORS' RIGHTS

A number of limitations on creditors' rights and remedies have been provided in the Code in order to curtail certain practices in the consumer field regarded as either inherently abusive or as having formed the basis for substantial abuse in the past. Many of these restrictions are embodied in consumer protection legislation already in effect in various states. Virtually all of them, however, would be new to West Virginia.

### A. Provisions Affecting Consumer Credit Sales, Leases and Loans

1. *Generally.*—Multiple agreements may not be used by a seller or lender for the purpose of obtaining a higher credit service or loan finance charge than would otherwise be permitted, or to avoid disclosure of an annual percentage rate.<sup>96</sup> Wage assignments are unenforceable.<sup>97</sup> Authorizations given to confess judgment on behalf of the buyer, lessee or borrower are void.<sup>98</sup>

2. *Security.*—A seller may take a security interest in the property sold. In the case of goods, however, the debt secured must be at least \$300, and in the case of services performed upon land or goods

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<sup>94</sup> UCCC §§ 2.302 (2), 3.302 (2).

<sup>95</sup> UCCC §§ 2.313, 3.312.

<sup>96</sup> UCCC §§ 2.402, 3.409, 3.509.

<sup>97</sup> UCCC §§ 2.410, 3.403.

<sup>98</sup> UCCC §§ 2.415, 3.407.

installed or annexed thereto, the debt must be at least \$1000.<sup>99</sup> A lessor is prohibited from taking a security interest in any property of the lessee to secure the debt arising from the lease.<sup>100</sup> A lender under a supervised loan (carrying rates over 18 percent) may not take a security interest in land where the principal is \$1,000 or less.<sup>101</sup> It is also noted that a creditor may not make a separate charge for casualty insurance where the property insured has a value less than \$300 or where the principal or amount financed is less than \$300.<sup>102</sup>

3. *Balloon payments.*—If any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer or borrower has the right to refinance the amount of that payment at the time it is due, without penalty, on terms no less favorable than the terms of the original agreement.<sup>103</sup> A lessee's final payment may not exceed twice the average payment allocable to a monthly period under the lease.<sup>104</sup>

4. *Attorney's fees.*—Alternative provisions are furnished with respect to agreements calling for payment by the buyer, lessee or borrower of his creditor's attorney fees. Under the first alternative, such a provision is prohibited and unenforceable.<sup>105</sup> Under the second alternative, attorneys' fees are limited to 15 percent of the unpaid debt after default and referral to an attorney who is not a salaried employee of the creditor.<sup>106</sup> If the second alternative is adopted, attorney fees are nevertheless prohibited on supervised loans in which the principal is \$1,000 or less.<sup>107</sup>

5. *Limitation on garnishment.*—The maximum part of an individual's disposable earnings (meaning earnings after deduction for taxes required to be withheld) subject to garnishment may not exceed the lesser of (1) 25 percent of such disposable earnings or (2) forty times the federal minimum hourly wage then in effect (currently being forty hours per week times \$1.60, aggregating \$64.00 weekly).<sup>108</sup> This limitation, however, is confined to garnishment to enforce payment of a judgment arising from a consumer credit sale,

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<sup>99</sup> UCCC § 2.407 (1).

<sup>100</sup> UCCC § 2.407 (2).

<sup>101</sup> UCCC § 3.510.

<sup>102</sup> UCCC § 4.301 (3).

<sup>103</sup> UCCC §§ 2.405, 3.402.

<sup>104</sup> UCCC § 2.406.

<sup>105</sup> UCCC §§ 2.413, 3.404 (Alternative A).

<sup>106</sup> UCCC §§ 2.413, 3.404 (Alternative B).

<sup>107</sup> UCCC § 3.514.

<sup>108</sup> UCCC § 5.105.

lease or loan.<sup>109</sup> The Code provision is similar to that of the Federal Consumer Credit Protection Act which limits garnishment, effective July 1, 1970, to the lesser of (1) 25 percent of disposable earnings or (2) thirty times the federal minimum hourly wage in effect at the time the earnings are payable (currently being \$48.00 weekly);<sup>110</sup> but the federal act applies to garnishment for any purpose, whereas the Code provision is limited to consumer indebtedness.

Fortunately, the federal act empowers the Secretary of Labor to exempt garnishments issued under the laws of any state if he determines that the laws of that state provide restrictions on garnishment which are substantially similar to those federally imposed.<sup>111</sup> Assuming that the Code provisions will warrant such an exemption, the employer is still left with the problem of determining whether a given judgment arises from a consumer credit sale, consumer lease or consumer loan as those terms are defined by the Code. Thus, the employer would be called upon to satisfy himself as to the very details of the underlying transaction, such as whether the original debt was payable in less than four installments without a credit service charge.<sup>112</sup> The employer ought to be relieved of the expense and the potential liability which such a burden would impose. To this end, it would seem preferable to amend the state wage garnishment statute<sup>113</sup> in such a way as to continue the existing West Virginia wage garnishment limitation at 20 percent (calculated, however, on net disposable earnings after tax withholdings rather than on gross earnings as at present) regardless of the character of the underlying debt, but exempting in any event forty times the federal minimum hourly wage, now aggregating \$64 weekly.

It is also to be observed that, under the Code exemption, the employer would frequently be required to withhold and pay over trivial sums on wage garnishment of lower income employees. For example, an employee earning a gross of \$80 per week, less income tax and Social Security withholdings of \$10, would realize disposable earnings of \$70 weekly. After allowing for the Code's current \$64 flat exemption, the sum of \$6 would be payable under the garnishment. The cost to the employer and the collecting court of handling such a small sum would surely exceed the amount of the garnishment

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<sup>109</sup> UCCC § 5.105 (2).

<sup>110</sup> Act of May 29, 1968, Pub. L. No. 90-321, § 303(a), — Stat. —.

<sup>111</sup> Act of May 29, 1968, Pub. L. No. 90-321 § 305, — Stat. —.

<sup>112</sup> UCCC §§ 2.104, 3.104.

<sup>113</sup> W. VA. CODE ch. 38, art. 5A, § 3 and art. 5B, § 3 (Michie 1966).



payment and would hardly serve to do more than create friction between employer and employee. Accordingly, it is suggested that a further exemption be granted to the debtor in any instance where the garnishment would not produce at least \$10 out of his earnings for a given pay period.

6. *No discharge from employment for garnishment.*—Employers are prohibited from discharging an employee by reason of garnishment proceedings with respect to a judgment arising from a consumer credit sale, consumer lease or consumer loan.<sup>114</sup> This provision is an extension of the Federal Consumer Credit Protection Act which provides that an employee shall not be discharged by the employer for a single garnishment.<sup>115</sup> Again, however, it would seem that this prohibition ought to be broadened so as to apply to all garnishment proceedings regardless of the character of the underlying indebtedness. The Code further provides that an employee wrongfully discharged hereunder may recover lost wages up to six weeks and may obtain an order requiring reinstatement.<sup>116</sup>

7. *Unconscionability.*—The Code adopts the unconscionability provision of the Uniform Commercial Code relating to sales<sup>117</sup> and extends it to consumer leases and loans as well.<sup>118</sup>

## *B. Provisions Affecting Consumer Credit Sales and Leases Only*

1. *Certain negotiable instruments prohibited.*—Under a consumer credit sale or lease, other than one primarily for an agricultural purpose, the seller may not take a negotiable promissory note; but if he does, a holder in due course is nevertheless protected.<sup>119</sup> It is the view of the Code's draftsmen that professional financiers buying consumer paper, being well aware of the enactment of the Code, will normally not qualify as holders in due course with respect to notes taken by dealers in violation of this provision and negotiated to them. It is, however, possible that in unusual cases, second or third holders may not know of the instrument's consumer origin, in which case the Code upholds the policy favoring negotiability in order not to cast a cloud over negotiable instruments generally.

2. *When assignee subject to defenses.*—Allied with the prohibition on use of negotiable notes are the Code's alternative provisions

<sup>114</sup> UCCC § 5.106.

<sup>115</sup> Pub. L. No. 90-321, § 304, 90th Cong., 2d Sess., (May 29, 1968).

<sup>116</sup> UCCC § 5.202 (6).

<sup>117</sup> W. VA. CODE ch. 46, art. 2, § 302 (Michie 1966).

<sup>118</sup> UCCC § 5.108.

<sup>119</sup> UCCC § 2.403.

which would either void or limit an agreement by the buyer or lessee to waive, as against the assignee of a seller or lessor, claims or defenses arising out of a sale or lease. In the past, such agreements have often served as the basis for substantial abuse in consumer transactions in which a defrauded buyer is nevertheless required to pay the seller's assignee in full. Here, the Code's draftsmen have left it to the various state legislatures to decide which of two approaches is to be taken. The first alternative is advocated by consumer groups. It would make the assignee subject to all claims and defenses which the buyer or lessee may have against the seller or lessor, notwithstanding an agreement to the contrary.<sup>120</sup> Under the second alternative, favoring the creditor viewpoint, an agreement not to assert such a claim or defense against the assignee would not be enforceable unless the buyer or lessee gives the assignee written notice of his claim or defense within three months after the assignee has notified him in writing that the assignment has been made and that he has three months within which to notify the assignee of any such claim or defense.<sup>121</sup> Under either alternative, the claim of the buyer or lessee is limited to the amount owing at the time it is asserted and can only be asserted by way of set-off or defense to the claim of the assignee.<sup>122</sup>

### *C. Provisions Affecting Consumer Credit Sales Only*

1. *Cross collateral.*—A seller may further secure his debt by taking a security interest in other property in which the seller already has a security interest by virtue of a prior sale.<sup>123</sup> And the seller may likewise take a security interest in the property sold in the subsequent sale as security for the previous debt.<sup>124</sup> But the rate of the credit service charge may not exceed the rate that would be permitted if the balances were consolidated.<sup>125</sup> Where such debts are either secured by cross-collateral or consolidated, they are deemed paid and the security interests are terminated under the first-in-first-out rule.<sup>126</sup>

2. *Referral sales.*—Another consumer area which has been characterized by substantial abuse is the referral sale. It is largely eliminated under the Code. A seller or lessor may not offer to give

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<sup>120</sup> UCCC § 2.404 (Alternative A).

<sup>121</sup> UCCC § 2.404 (Alternative B).

<sup>122</sup> *Supra* notes 120 and 121.

<sup>123</sup> UCCC § 2.408 (1).

<sup>124</sup> *Id.*

<sup>125</sup> UCCC § 2.408 (2).

<sup>126</sup> UCCC § 2.409.

a rebate, payment or other credit to the buyer or lessee as an inducement for a sale or lease in exchange for the names of prospective purchasers or lessees or the like where the earning of such rebate, payment or other credit is contingent upon the occurrence of an event subsequent to the agreement.<sup>127</sup> Any such agreement is unenforceable and the buyer or lessee may either rescind the agreement or retain the goods delivered and services performed without paying for them.<sup>128</sup>

3. *Restrictions on deficiency judgments in consumer credit sales.*—Where the cash price of goods in which the seller has a security interest does not exceed \$1,000, the seller or his assignee may repossess or accept surrender of the goods without obligation to resell or he may proceed to judgment for the balance owing on the sale. He cannot retake the goods and also obtain a deficiency judgment.<sup>129</sup> However, the buyer may be held liable to the seller for wrongfully damaging or withholding the collateral.<sup>130</sup>

## VII. DEBTORS' RIGHTS AND REMEDIES

The debtor is granted the right to recover excess charges and in addition certain penalties may be imposed upon the creditor if his violation of the Code is intentional. The debtor is also given a "buyer's remorse" period in which to rescind home solicitation sales.<sup>131</sup> In this situation, the Code attempts to free the buyer from the effects of high pressure sales practices often associated with door to door selling of products which at times are inferior in quality and which often are overpriced. Similarly, the debtor is granted the right to rescind transactions creating a lien on his home. In either situation, the creditor remains bound while awaiting the lapse of the three-day period which the debtor may use both to reconsider and to shop for better terms.

### A. In General

1. *Debtor's right to rescind certain transactions affecting residence real estate.*—The Code adopts the provision of the Federal Consumer Credit Protection Act<sup>132</sup> pursuant to which the debtor is given a

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<sup>127</sup> UCCC § 2.411.

<sup>128</sup> *Id.*

<sup>129</sup> UCCC § 5.103.

<sup>130</sup> UCCC § 5.103 (5).

<sup>131</sup> Sher, *The "Cooling-Off" Period In Door to Door Sales*, 15 UCLA L. REV. 717 (1968).

<sup>132</sup> Act of May 29, 1968, Pub. L. No. 90-321, § 125, — Stat. —.

three-day right to rescind a consumer credit sale or loan agreement whereunder a security interest is retained or acquired in an interest in land which is used or expected to be used as the debtor's residence.<sup>133</sup> This right continues for three days after either the consummation of the transaction or the creditor's delivery to the debtor of written notice of his three-day right to rescind, whichever is later. This provision confers upon the debtor a cooling-off period somewhat akin to that prescribed for home solicitation sales,<sup>134</sup> but it is broader in the sense that it applies to loans as well as sales and is applicable whether the transaction took place in the home or elsewhere and whether or not accompanied by personal solicitation by the creditor. However, it does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling, nor does it apply to sales or loans by a non-professional creditor. Neither does it apply to situation in which homeowners must meet bona fide personal financial emergencies, if the Administrator has prescribed rules authorizing the extent and circumstances under which the debtor's right to rescind may be modified or waived. Upon rescission, any security interest given by the debtor is void. He is not liable for any charges and the creditor must return to the debtor within ten days any money or property given as earnest money, down payment or otherwise. Upon such return, the debtor must tender to the creditor, either at the site of the property or at the debtor's residence, any property delivered by the creditor, or, if tender in kind would be impractical, its reasonable value.<sup>135</sup> If the creditor fails to take possession within ten days after tender, ownership of all such property vests in the debtor without any obligation to pay for it.

2. *Home solicitation sales.*—A somewhat similar three-day right to rescind is given to the buyer with respect to a consumer credit sale of goods or services, other than farm equipment, made by a seller who personally solicits the sale at the buyer's residence and there obtains the buyer's agreement or offer to purchase.<sup>136</sup> However, this right

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<sup>133</sup> UCCC § 5.204.

<sup>134</sup> UCCC §§ 2.501-2.505.

<sup>135</sup> In an effort to forestall home improvement contractors and the like from proceeding with work on the debtor's premises prior to expiration of the three-day period (in which case the contractor would frequently be entitled to "reasonable value"), Proposed Regulation Z, Board of Governors of Federal Reserve System, 12 C.F.R. § 226.9 (c) (Oct. 16, 1968, directs that the creditor shall not, among other things, "make any physical changes in the property of the customer, or perform any work or service for the customer until he has reasonably satisfied himself that the customer has not exercised his right of rescission."

<sup>136</sup> UCCC § 2.502.

to rescind does not apply if the sale is made pursuant to prior negotiations between the parties at a fixed business establishment where goods or services are offered or exhibited for sale, nor does it apply if the sale is made pursuant to a pre-existing revolving charge account.<sup>137</sup> Neither does it apply where the seller, instead of financing the sale, merely assists the buyer in obtaining a loan elsewhere.<sup>138</sup> As with rescission of security interests in real estate, notice by the seller to the buyer of the right to rescind is a prerequisite to the running of the three-day period.<sup>139</sup> So, too, is the requirement that upon rescission the seller restore to the buyer any payments or any note or the like within ten days.<sup>140</sup> But here the seller may retain up to 5 percent of the cash price as a cancellation fee, in no event exceeding the amount of the cash down payment.<sup>141</sup> Following rescission the buyer upon demand must tender any goods delivered by the seller within a reasonable time, but if the seller fails to make such demand within a reasonable time, the goods become the property of the buyer without obligation to pay for them.<sup>142</sup> For this purpose, the Code presumes forty days to be a reasonable time.<sup>143</sup> The seller loses the benefit of any services performed prior to rescission.<sup>144</sup> Where the sale is governed by both this provision and the one on rescission of security interests in real estate, the buyer may elect to proceed under either.<sup>145</sup>

### B. Violation

1. *Violations other than disclosure violations.*—The debtor is not obligated to pay a charge in excess of that allowed under the Code and he is entitled to refund, credit or recovery for any such charge paid by him. The debtor is also accorded the following rights where the creditor fails to establish by a preponderance of evidence that the

<sup>137</sup> UCCC § 2.501.

<sup>138</sup> By definition, a consumer credit sale is limited to one in which "credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind," UCCC § 2.104 (a). Hence, the seller must provide the credit in order to fall within the definition.

<sup>139</sup> UCCC § 2.503. The notice here must be incorporated into the written agreement or offer itself, except where the buyer requests the seller to provide the goods or services without delay in an emergency. In the emergency situation, the buyer cannot cancel after the seller makes a substantial beginning of performance under the contract nor can he cancel as to goods if the goods cannot be returned in substantially as good condition as when received by the buyer. UCCC § 2.502 (5).

<sup>140</sup> UCCC § 2.504 (1).

<sup>141</sup> UCCC § 2.504 (3).

<sup>142</sup> UCCC § 2.505 (1).

<sup>143</sup> *Id.*

<sup>144</sup> UCCC § 2.505 (3).

<sup>145</sup> UCCC § 2.502 (6).

following violations were unintentional or the result of a bona fide error:

(a) Where the creditor violates the provisions barring use of of certain negotiable instruments or limiting the schedule of payments or loan term for regulated loans (carrying rates over 10 percent), the debtor is not obligated to pay the credit service or loan finance charge and he may recover a penalty as determined by the court up to three times the amount of such credit service or loan finance charge, together with reasonable attorney's fees.

(b) Where the creditor violates the provision relating to authority to make supervised loans (carrying rates over 18 percent), the loan is void and the debtor may recover any part of the principal or loan finance charge so made, together with reasonable attorney's fees.

(c) Where the debtor is entitled to a refund and the creditor refuses to make such refund within a reasonable time after demand, the debtor may recover a penalty as determined by the court up to the amount of the credit service or loan finance charge or ten times the amount of the excess charge, whichever is greater, together with reasonable attorney's fees. If the excess charge is found to have been made in deliberate violation or reckless disregard of the provisions of the Code, this penalty may be recovered even though the creditor has refunded the excess charge.<sup>146</sup>

Thus, while the Code prescribes substantial penalties to deter the over-reaching creditor, it recognizes that violations are ordinarily the result of unintentional errors which need not be dealt with severely. The debtor must bring action for recovery under (a), (b) and (c) above within two years after the violation with respect to revolving accounts and within one year after the due date of the last scheduled payment with respect to other agreements. But the debtor may nevertheless use refunds or penalties by way of set-off against his obligation at any time.<sup>147</sup> Recovery may be had from either the creditor committing the violation or from any assignee who undertakes direct collection of payments or enforcement of rights arising from the debt.

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<sup>146</sup> UCCC § 5.202.

<sup>147</sup> UCCC § 5.205.

2. *Disclosure violations.*<sup>148</sup>—For failure to disclose required information, the creditor is liable in an amount twice the credit service or loan finance charge but in no event less than \$100 nor more than \$1,000, together with reasonable attorney's fees. Action must be brought within one year after the violation, but the debtor may use the penalty by way of set-off against his obligation at any time.<sup>149</sup> Nevertheless, the creditor is not liable where he shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. Nor is the creditor liable where, within fifteen days after discovering an error and prior to either suit or receipt of written notice of the error, he notifies the debtor of the error and makes such adjustments in the account as may be necessary to limit the credit service or loan finance charge to the amount or percentage rate actually disclosed. The creditor is not liable to the debtor for advertising violations—these being left for injunctive action at the instance of the Administrator,<sup>150</sup> together with criminal sanctions for willful violations.<sup>151</sup> An assignee of the creditor is only liable hereunder when a security interest in land is involved and the assignee was engaged in a continuing business relationship with the original creditor. Even then, the assignee can escape liability if he shows by a preponderance of the evidence that he had no reasonable grounds to believe that the original creditor was engaged in violations of the Code and that he maintained procedures reasonably adapted to apprise him of the existence of the violation.

### VIII. ADMINISTRATION AND ENFORCEMENT

The Code recognizes that the remedies available to the debtor will frequently be unknown to him or, even if known, will involve such relatively small sums as to discourage private enforcement. Consequently, the appropriate public official is given rather broad authority designed both to thwart and to rectify breaches of the Code. He is empowered to issue cease and desist orders against creditors engaging in violations of the Code and his order becomes final if the creditor fails to seek court review within thirty days.<sup>152</sup> Enforcement of his order is to be had through the court.<sup>153</sup> However, he

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<sup>148</sup> UCCC § 5.203.

<sup>149</sup> UCCC § 5.205.

<sup>150</sup> UCCC §§ 6.108, 6.111.

<sup>151</sup> UCCC § 5.302.

<sup>152</sup> UCCC § 6.108; *see also* UCCC § 6.105.

<sup>153</sup> *Id.*

may not issue such an order with respect to unconscionable agreements or fraudulent or unconscionable conduct; rather, the Administrator must institute a civil action for an injunction.<sup>154</sup> The Administrator is also authorized to bring actions on behalf a debtor or a class of debtors to recover excess charges and penalties for failure to make a refund within a reasonable time after demand and to recover penalties for excess charges deliberately or recklessly made.<sup>155</sup>

The Code provides for extensive examining and investigatory powers over licensees making supervised loans and it permits the exercise of such powers over regulated lenders as well.<sup>156</sup> Investigatory authority is likewise conferred with respect to any creditor where there exists probable cause to believe that a person has engaged in an act subject to administrative action under the Code.<sup>157</sup> However, the exercise of cease and desist orders and investigatory powers by the Administrator is limited to small loan companies and other non-banking lenders with respect to loans and to merchants and sales finance companies with respect to sales and leases.<sup>158</sup> On the other hand, the exercise of all such powers as to banking and similar institutions is reposed in the hands of the same governmental authority now supervising such institutions.<sup>159</sup> For example, national banks will continue to be supervised by the Comptroller of the Currency.

The proponents of the Code recommend centralizing all powers of administration in a single official or agency.<sup>160</sup> In West Virginia this official would doubtless be the commissioner of banking. In addition, there would be created a Council of Advisors on Consumer Credit consisting of sixteen members to be appointed by the governor, with fair representation from various segments of the consumer credit industry and the public.<sup>161</sup> It would be the function of the Council to advise and consult with the Administrator concerning the exercise of his powers and to make recommendations to him to the end that the objectives of the Code might be fully achieved.<sup>162</sup>

## IX. CONCLUSION

On balance, the Code has much to commend it. For consumer credit sales, it imposes generous rate ceilings where none have exist-

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<sup>154</sup> UCCC §§ 6.108 (6), 6.111.

<sup>155</sup> UCCC § 6.113.

<sup>156</sup> UCCC § 3.506.

<sup>157</sup> UCCC § 6.106.

<sup>158</sup> UCCC §§ 3.506, 6.105.

<sup>159</sup> *Id.*

<sup>160</sup> UCCC § 6.103, comment.

<sup>161</sup> UCC § 6.301.

<sup>162</sup> UCC § 6.302.



ed. For consumer loans it prescribes, for all lenders, rate maximums that are largely comparable to those now available to a select group of lenders who enjoy a monopoly with the high risk borrower. To generalize, the Code rates are (1) comparable to existing small loan rates on loans up to \$800,<sup>163</sup> (2) greater than industrial loan rates authorized on loans in the \$800 to \$3,500 class<sup>164</sup> and (3) less than industrial loan company rates permitted on loans substantially in excess of \$3,500.<sup>165</sup> Moreover, the competitive forces to be unleashed by the Code's free entry approach, together with the requirement that rates be disclosed in understandable terms, will tend to drive credit costs below the Code ceilings.

These rates, of course, do not take into account the increased yields now available through tie-in sales of insurance. If adoption of the Code were to be accompanied by effective regulation of credit insurance costs to the end that the yield to the lender is in fact confined to the rate which he advertises, high rate lenders would likely abandon the sale of expensive credit accident and health policies and would be compelled to offer credit life at genuinely competitive rates. The savings to the borrower would, in turn, appreciably offset the effect of higher Code rates in the \$800 to \$3,500 class.

The extensive protection which the Code affords to the consumer will do much toward equalizing the marked disparity in bargaining power and sophistication between the consumer and his seller, lender or lessor. These safeguards alone have earned the endorsement of the entire Code by the Special Assistant to the President for

<sup>163</sup> At \$800, the composite rate for a supervised loan repayable in a single installment is 26.67% under the Code as compared to 25.5% under the West Virginia Small Loans Act, W. VA. CODE ch. 47, art. 7A, § 13 (Michie 1966). Of course, small loans are ordinarily repayable in equal monthly installments over periods of one to two years or longer, in which case the composite rate is greater under both the Code and the Small Loans Act. See note 38, *supra*.

<sup>164</sup> Consumer loans in the \$800 to \$3,500 class are typically repayable in one, two or three years, in which case the industrial loan rate would average slightly in excess of 20%. The Code rates, however, would run several percentage points higher on the smaller loans in this class, narrowing to the equivalent of the industrial loan rate at about \$3,500. Compare note 38, *supra*. On the other hand, schedules of indebtedness filed in consumer bankruptcy cases in the Southern District of West Virginia disclose that it is not at all uncommon for the same borrower to be indebted simultaneously to two or even three small loan companies on separate \$800 loans, in which case the composite rate on all such loans combined is substantially greater than would be the rate for a single \$1,600 or \$2,400 loan under the Code.

<sup>165</sup> On consumer loans of this size, the loan terms tend to extend beyond three years in order that the monthly repayment is low enough to be manageable. As the loan term lengthens beyond three years, the maximum permissible rate under the Code levels to 18%, whereas the true annual rate for industrial loans increases. See text at notes 50 to 59, *supra*, and compare note 38, *supra*.

Consumer Affairs and by the President's Consumer Advisory Council.<sup>166</sup>

Nevertheless, it must be observed that there is no demonstrable urgency necessitating immediate enactment of the whole Code. It is true that enforcement of disclosure will rest at the federal level commencing July 1, 1969, in the absence of substantially similar state legislation. Yet, any concern over federal regulation can readily be met by adoption of a truth in lending act patterned after the Code's provisions relating to disclosure.

The economic and social implications of the Code ought to be carefully weighed before the question of its adoption is passed upon. To be sure the architects of the Code have given painstaking consideration to the Code's economic and social impact. Yet, this is hardly reason to discourage a thoughtful, second look at legislation of this magnitude. Indeed, it is quite likely that all aspects of the Code will be subjected to extensive study and fruitful analysis by many state legislative bodies over the nation, particularly those of the more populous states. The full benefit of these efforts ought to be on hand before final judgment is made.

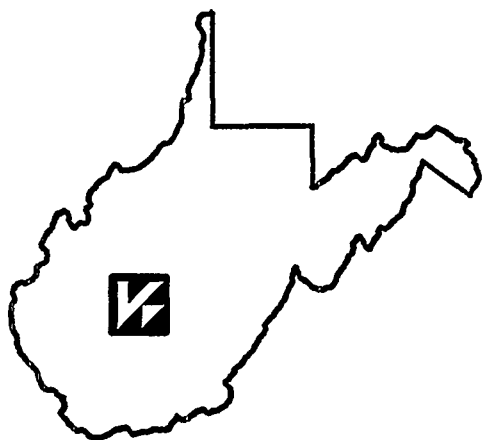
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<sup>166</sup> President's Consumer Advisory Council, Resolution Endorsing the Uniform Consumer Credit Code (September 5, 1968).

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